

**THE UNIVERSITY TRIBUNAL
UNIVERSITY OF TORONTO**

AND IN THE MATTER OF Ms. C.

AND IN THE MATTER OF The University of Toronto *Code of Behaviour on Academic Matters*

BETWEEN

Governing Counsel of the University of Toronto

and

Ms. C.

REASONS FOR DECISION ON PENALTY

[1] A hearing was held on May 29, 2001 by the Trial Division of the University Tribunal to consider the following charges against Ms. C.:

1. On or about January 7, 2001 you did knowingly represent as your own, an idea or an expression of an idea, and/or a work of another in connection with a form of academic work, namely, in the take-home test submitted to fulfill course requirements in SOC 203Y, contrary to Section B.I.1(d) of the *Code of Behaviour on Academic Matters, 1995*. Pursuant to Section B of the *Code* you are deemed to have acted knowingly if you ought reasonably to have known that you represented as your own, an idea or expression of an idea or work of another.
2. On or about April 3, 2000 you did knowingly represent as your own, an idea or an expression of an idea, and/or a work of another in connection with a form of academic work, namely, in an essay submitted to fulfill course requirements in SOC 203Y, contrary to Section B.1.1 .(d) of the *Code of Behaviour on Academic Matters, 1995*. Pursuant to Section B of the *Code* you are deemed to have acted knowingly if you ought reasonably to have

known that you represented as your own, an idea or expression of an idea or work of another.

3. In the alternative, on or about January 17, 2000, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind in a take-home test submitted to fulfill course requirements in SOC 203Y contrary to Section B.1 .3(b) of the *Code of Behaviour on Academic Matters, 1995*. Pursuant to Section B of the *Code* you are deemed to have committed the offence knowingly if you ought reasonably to have known that you engaged in any form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind.
4. In the alternative, on or about April 3, 2000, you knowingly engaged in a form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other academic advantage of any kind in an essay submitted to fulfill course requirements in SOC 203Y contrary to Section B.1.3.(b) of the *Code of Behaviour on Academic Matters, 1995*. Pursuant to Section B of the *Code* you are deemed to have committed the offence knowingly if you ought reasonably to have known that you engaged in any form of cheating, academic dishonesty or misconduct, fraud or misrepresentation in order to obtain academic credit or other advantage of any kind.
5. On or about January 17, 2000, you knowingly submitted an academic work containing a purported statement of fact or reference to a source which has been concocted, namely, in the sources set out in the bibliography to the take-home test submitted to fulfill course requirements in SOC 203Y, contrary to Section B.1.1(f) of the *Code of Behaviour on Academic Matters, 1995*. Pursuant to Section B of the *Code* you are deemed to have acted knowingly if you ought reasonably to have known that the academic work contained a purported statement of fact or reference to a source which has been concocted.
6. On or about April 3, 2000 you knowingly submitted an academic work containing a purported statement of fact or reference to a source which has been concocted, namely, in the sources set out in the bibliography to an essay submitted to fulfill course requirements in SOC 203Y, contrary to Section B.I.1.(f) of the *Code of Behaviour on Academic Matters, 1995*. Pursuant to Section B of the *Code* you are deemed to have acted knowingly if you ought reasonably to have known that the academic work contained a purported statement of fact or reference to a source which has been concocted.

At the outset of the hearing, charges 5 and 6 were withdrawn.

[2] A hearing was held with respect to charges 1 to 4. The panel concluded that there was a finding of guilt on charges 1 and 2 and a finding of not guilty on charges 3 and 4. In reaching its decision, the panel expressly stated that it was not prepared to make a finding that the offences were committed with actual knowledge or dishonest intent, although the conduct fell within the expanded definition of “knowingly” as it is defined in the *Code*. In reaching the decision the panel noted that there had been many unusual and extenuating circumstances which would be more appropriately dealt with in the context of penalty.

[3] After making our ruling with respect to the charges, we heard submissions from both counsel with respect to penalty on Thursday May 31, 2001. In rendering our decision on penalty we indicated that we would follow up with written reasons to explain the basis for our decision.

[4] In our oral reasons on penalty delivered on May 31, 2001, we noted once again that the basis of our decision was that Ms. C. had not acted with dishonest intent.

[5] The best summary of the principles to apply in determining the appropriate penalty is in the decision of the University Tribunal in the matter of [Mr. C.] dated November 5, 1976 where Mr. Sopinka (as he then was) stated:

What then are the principles that this Tribunal should follow in dealing with an appeal from sentence? First, in my opinion, punishment is not intended to be retribution to get even, as it were, with the student for what he has done. It must serve a useful function. The classical components of enlightened punishment are reformation, deterrence and protection of the public. In applying these criteria, a tribunal should consider all of the following:

- a) the character of the person charged;
- b) the likelihood of a repetition of the offence;
- c) the nature of the offence committed;
- d) any extenuating circumstances surrounding the commission of the offence;
- e) the detriment to the University occasioned by the offence;
- f) the need to deter others from committing a similar offence.¹

[6] We were referred to a number of other decisions involving plagiarism. It goes without saying that it is difficult to compare one case to another as the cases are quite fact specific. No cases were cited to us in which there had been a clear finding of guilt based on the extended definition of “knowingly”. Many of the cases cited to us were cases involving a second offence.

[7] We considered all of the cases referred to us and the general sentencing principles in the context of this particular fact situation. We concluded that in the particular circumstances of this case, the penalty should be on the low end of the spectrum. While we accept that, generally speaking, a conviction for plagiarism would normally involve some suspension, in the particular

¹ See 1976/77-03 at 12.

circumstances of this case we did not feel that a suspension was appropriate. Rather, we fashioned a remedy in which we tried to balance the interests of the University with the interests of the student.

[8] The particular circumstances considered by the panel in imposing the penalty were as follows:

1. The course in question was an undergraduate course with a high enrolment, some 280 students. Professor Jack Veuglers, to his credit, concluded that it was important for undergraduate students to learn how to write. Accordingly, a significant portion of the course was aimed at teaching students to write properly. Included in the introductory material under the heading Scope and Aims of this Course the following is stated:

Improving writing skills is another main aim of this course ... how to craft a strong essay will be discussed when questions for the take home tests are distributed.

This is followed by a footnote directing the students to the University of Toronto web site. The footnote states as follows:

Visit www.utoronto.ca/writing for useful tips on:

- writing (style, research, organization, grammar, punctuation)
- proper citation and how to avoid plagiarism
- writing when English is a second language
- critical reading
- writing instruction and support at the U of T

2. The web site referred to above contained a document entitled “How not to Plagiarize”.
3. The Course Outline notes that written work is to be returned to the student accompanied by a comment and mark sheet which would make “explicit the qualities associated with good writing”. It then states as follows:

The main criteria of good writing for this course are:

- originality of thesis or argument
- adequate evidence to support thesis or argument
- appropriate use of secondary sources
- coherence of ideas (clear overall structure, smooth transitions, concise expression)
- style (tone, stance towards the audience, level of formality)
- grammar, punctuation, citation form

4. Although Professor Veuglers stressed to the students the importance of not plagiarizing, he acknowledged that he did not devote time during the lectures to teaching the students

what was acceptable footnoting or proper citation practices. This was, however, dealt with by the teaching assistants.

5. The offence in question relates to two written take-home assignments. The first assignment was a take home test. It is clear from the take-home test submitted that large portions of the test (approximately two pages out of a five page paper) were taken from another source. The source was cited in the paper at the conclusion of the two pages of text in question, but there was no indication that the text was essentially quoted verbatim from the cited source.
6. Originally, the teaching assistant suspected that the work was from a concocted source and he graded the paper at 58% as a result. When requested by the teaching assistant to provide the source in question, Ms. C. approached a representative of the faculty and asked for directions as to how to deal with what she believed to be a false accusation. This conduct seemed to the panel to be completely inconsistent with a student who had knowingly plagiarized the work. Rather, we believed that it was consistent with a student who believed she had done the assignment properly and could not understand why the teaching assistant had given her such a low mark.
7. Because this course was intended, in part, to teach writing skills, students were docked marks if their citation practices and their use of sources was not done in accordance with proper procedures.
8. Ms. C. asked that her paper be re-read. On the re-read of this paper, she was given a mark of 62%.
9. The take home exam was returned to her during the second term when there was a strike by teaching assistants. There was some confusion in the evidence as to the impact, if any, of the teacher's strike, but it is fair to say that the return of the paper and the feedback were delayed as a result of this strike,
10. In the period following the teacher's strike, the teaching assistants gave instructions in the small groups as to the proper techniques for citation and use of sources. There were special classes and students were given extra marks for attending the special classes. Monica C. attended the special classes and received credit for that attendance.
11. The second written assignment contained the same type of improper use of source, although the reliance upon source material was less significant than in the first paper. Although the evidence is somewhat unclear, it appears that the second paper was submitted prior to Ms. C. being confronted with the allegation that the first paper was plagiarized.
12. Professor Veuglers in his evidence testified that there were many students in his course who did not understand how to use sources properly. He stated that if one or two short

sentences were lifted from a source he would overlook it, but if there was more than that, he would “send them to the Dean”. In the particular course in question, he “sent 15 students to the Dean” for the academic offence of plagiarism based on their failure to meet the appropriate standards for proper citations.

13. As noted above, this is an undergraduate course. Ms. C. had just transferred from science to arts. During her earlier studies in sciences, Ms. C. did not take many courses involving written assignments. She did not distinguish herself as a good student. It appeared to the panel based on hearing her evidence, that she did not understand proper citation techniques or the proper use of sources. She had not gone to the web site. Simply put, she was not a good student. It was accepted by the panel that she did not understand how to use sources so that the information contained in the source material could be incorporated into the text in her own words or, if not, by using proper citation techniques.
14. We accepted Ms. C.’s evidence that she did not understand properly techniques for citations. We found that she did not act dishonestly in a sense of deliberately setting out to copy the work of others and to submit it as her own.
15. This was a first offence.
16. Although she did not plead guilty, she presented herself in a manner that indicated that she had learned from this incident and we accepted that it would be unlikely that she would commit such an offence again.
17. Since the incident in question, she had completed all of the other requirements for her to graduate. At the time of the hearing, she needed a passing mark in this course in order to graduate. She had completed her other courses successfully without incident. She had expressed some interest in attending a graduate program and she was hopeful that she could graduate in June 2001.
18. At the outset of the hearing counsel for Ms. C. brought a motion to stay the proceedings on the basis that there had been undue delay in proceeding with the complaint. There was a period of some delay, but it was not inordinate. However, the delay was such that in the event the panel ruled in her favour, she would be unable to graduate. We concluded at the outset of the hearing that we would complete the hearing as quickly as possible in order to avoid any such prejudice and the University agreed to facilitate her graduating in June 2001 if she was found not guilty.
19. After hearing all the evidence, we fashioned a remedy that we believed made sense in the circumstances in order to allow her to complete the requirements for this course and to graduate as soon as possible, while at the same time recognizing that in order to maintain the integrity of the University’s rules on plagiarism that that the penalty recognize the seriousness of the offence.

20. On June 1, 2001 the Governing Counsel Secretariat delivered a letter to Ms. C. through her counsel Mr. Muskovitch, setting out an outline of our decision on penalty². On Friday June 1, 2001 Ms. C. was advised that Professor Veuglers did not grant his permission for her to rewrite the two take home papers. Ms. C. made an effort to inquire into the procedure for applying for a late admission, but because the course was being offered over a very short period of time, early in the week of June 4, Ms. C. made a decision not to apply to the summer offering of this course.
21. During the week of June 4 there was an exchange of correspondence between Mr. Muscovitch and discipline counsel, Ms. Harmer. It is clear from this correspondence that, in rendering our original decision on penalty, we failed to deal with two matters. One matter related to what would happen in the event Ms. C. chose not to apply to the summer offering of the course. The second issue was the grade to be given to the course that was the subject matter of the proceeding.
22. Arrangements were made for the panel to be reconvened to deal with these two issues. We met on August 23, 2001.
23. On the first issue, there was agreement that the penalty should provide as follows:

If Ms. C. does not apply to the summer offering of the course, she would have to apply to the fall offering of the course if she wishes to complete the course.
24. With respect to the grade to be given for her work in the course offered in the 1999/2000 academic year, there was considerable disagreement. The University's position was that she should be given a grade of zero or in the alternative a failing grade. Mr. Muscovitch submitted that, in all the circumstances, she should be given a mark based on the average of her course work already completed excluding the two take home assignments.
25. After considering the submissions, the panel concluded that Ms. C. should be given a failing grade of 37.5 for her work in the course offered in the 1999/2000 academic year. This is the mark for her work in the course assuming she received a mark of zero for the two assignments in question. We concluded that it was not consistent with our original approach to penalty that she should be given a passing mark in the course. We concluded that in all the circumstances, in order to achieve a passing grade she would have to complete the course. In the circumstances this means that she will have to apply to the fall offering of this course if she wishes to complete this course.
26. Accordingly, we have amended the penalty to include the issues referred to above.

Accordingly, we imposed the following penalty:

² See 2000/01-04.

1. The panel believes that the appropriate sanction would involve the respondent, Ms. C., being allowed to complete the course in question by re-writing the two take home papers within equivalent time deadlines as the original assignments required so that a final mark for this course could be recorded on her transcript in time for her to graduate in the fall, 2001. In this respect, the panel relied on Section C.II.B.1.(b) of the Code.
2. The above remedy requires the permission of the instructor. If such permission is not granted by 5:00 p.m. Friday June 1,2001, Ms. C. should be allowed to apply for late admission to the summer offering of this course, currently in progress. And, if she so applies, she is to be granted late admission to this course.
3. If Ms. C. applies for late admission to the course and, for some reason, it is not feasible for the University administration to grant such late admission, the final grade in the course is to be recorded on her transcript equal to the average of her course work already completed, excluding the two take home assignments, within time for her to graduate in June, 2001.
4. If Ms. C. does not apply to the summer offering of the course, she would have to apply to the fall offering of the course if she wishes to complete the course.
5. Ms. C. will be given a failing grade of 37.5 for her work in the course offered in 1999/2000 academic year.
6. Ms. C. should receive an oral and written reprimand.
7. There is to be a notation on Ms. C.'s transcript, indicating that she was found guilty of this academic offence, for a period of one year from this date (May 31, 2001).
8. That this case be reported to the Provost for publication in University newspapers, with Ms. C.'s name withheld.

Date: September 13, 2001

John Keefe
John Keefe

Date: September 17, 2001

Professor Patrick Macklem
Professor Patrick Macklem

Date: September 19, 2001

Martha Kumsa
Martha Kumsa